

Supreme Court Cases

Free Speech

1. Schenck v United States (1919)

- A. Schenck, socialist, distributed leaflets calling the draft a “deed against humanity” and comparing it to slavery. He was arrested for violating the Espionage and Sedition Acts.
- B. Court ruled in favor of the US. Justice Holmes issues the “clear and present danger test”, which means that speech may be limited if it is in such a nature to create a clear and present danger that will bring about the substantive evils that Congress has the right to prevent.

2. Gitlow v New York (1925)

- A. Gitlow, socialist, wrote the Left Wing Manifesto calling for a proletariat revolution. He was arrested under a NY law, prohibiting the advocacy of criminal anarchy.
- B. Court ruled in favor of NY. **1st Amendment applies to the states by the due process clause of the 14th**. State may forbid speech or publication if it has a tendency to result in action dangerous to public security, even w/o clear and present danger
- C. Justice Holmes dissent—speech created no “energy” to overthrow government, therefore, no clear and present danger. Free speech is a fundamental personal right.

3. Dennis v United States (1951)

- A. Dennis was indicted under the Smith Act for willfully and knowingly conspiring to teach and advocate the overthrow of the government
- B. Court distinguished the difference between teaching and advocacy. Advocacy creates clear and present danger. (Sliding scale test)

4. Brandenburg v Ohio (1969)

- A. Brandenburg, member of the KKK, arrested for making a speech that violated an Ohio law preventing the advocacy methods of terrorism as a means of accomplishing political reform.
- B. Court ruled that free speech cannot be limited because of advocacy alone, no matter how advocate they are. Speech can be limited if it incited direct lawless action or is likely to incite or produce such action

5. R.A.V. vs St. Paul (1992)

- A. Robert Viktura and others burned a cross in an African American family's yard and was arrested for violating a city ordinance which prohibits the display of symbols that arouse "anger, alarm, or resentment in others on the basis of race, color, creed, religion, or gender.
- B. Court ruled in favor of R.A.V. Speech cannot be limited because "it prohibits otherwise permitted speech solely on the basis of the subjects the speech address" Government does not have the power to pick sides on a debate.

6. Wisconsin v Mitchell (1993)

- A. Todd Mitchell and friends beat up a white boy and stole his shoes. He was convicted and given two years in jail for violating a Wisconsin hate speech law, which can enhance a sentence if a crime is committed because of sex, religion, color, etc.
- B. Court ruled in favor of Wisconsin. Mitchell is not protected under the 1st Amendment because his conduct (assault) is not protected where expression (R.A.V) is.